

**STATE OF CALIFORNIA**

**Energy Resources Conservation  
and Development Commission**

In the Matter of:	)	<b>Docket No. 98-AFC-1</b>
	)	
Application for Certification	)	
for the Pittsburg District Energy	)	
Facility (PDEF)	)	
_____	)	

**EVIDENTIARY HEARING continued**

**Final Determination of Compliance**

Tuesday, June 15, 1999  
2:00 p.m.

Held at the:

California Energy Commission  
1516 Ninth Street, Hearing Room B  
Sacramento, California 95814  
(916) 654-4489, (800) 822-6228  
<http://www.energy.ca.gov>  
and via Conference Call

PDEF Committee Evidentiary Hearing of June 15, 1999

Reported by:

Susan M. Palmer, Notary Public  
Certified Electronic Reporter

PDEF Committee Evidentiary Hearing of June 15, 1999

PDEF COMMITTEE MEMBERS PRESENT

DAVID A. ROHY, Ph.D., CEC Vice Chair, Presiding Member

MICHAL C. MOORE, Second Member, Commissioner

PARTICIPATING STAFF MEMBERS

BOB ELLER, Advisor to Vice Chair Rohy

SUSAN GEFTER, Hearing Officer

ARLENE L. ICHIEN, Assistant Chief Counsel

ROBERTA MENDONCA, Public Advisor, via Conference Call

SHAWN PITTARD, Advisor to Commissioner Moore

PRISCILLA ROSS, Executive Assistant to the Public Advisor

LORRAINE WHITE, Project Manager

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FOR APPLICANT ENRON

ALLAN J. THOMPSON, Attorney at Law, Orinda, California

SAMUEL L. WEHN, Enron Capital & Trade Resource Corporation,  
Director (Witness)

FOR APPLICANT DELTA

SUSAN STRACHAN, Delta Energy Center

INTERVENORS

JACK HALL, City of Antioch, via Conference Call

PAULETTE M. LAGANA, Community Abatement of Pollution-Industrial  
Toxins, via Conference Call

KATE POOLE, California Unions for Reliable Energy, via  
Conference Call

WITNESSES

DENNIS T. JANG, Bay Area Air Quality Management District

RICHARD RYAN, Contra Costa County Fire Protection District

DEWEY SAVELL, Contra Costa County Fire Protection District

ALSO PRESENT and/or SPEAKERS FROM THE PUBLIC

JAMES B. MacDONALD, Pittsburg resident

EDWARD L. STROHBEHN, JR., McCutchen, Doyle, Brown & Enersen, LLP

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Wednesday, June 15, 1999 2:06 o'clock p.m.

P R O C E E D I N G S

**PRESIDING MEMBER ROHY:** Welcome to the Pittsburg District Energy Filing Evidentiary Hearing. We are here this afternoon to conduct the Evidentiary Hearing on the Final Determination of Compliance regarding Enron's Application for Certification for the Pittsburg District Energy Facility.

Before we begin we would like to introduce the Committee and ask the parties to identify themselves for the record. And, for the record, this is probably the nearest to the starting point that we have ever actually started. We are approximately six minutes late, which is a record.

We are conducting this Hearing in Sacramento. However, parties and interested members of the public were invited to call in to the Hearing via the teleconference using a tollfree number. That microphone and pick-up is in the center table here. And you will have to speak up so they can hear. And I ask the people at the other end to speak up also because while good, they are not great.

So please identify yourself on both ends so everyone knows who is speaking.

For the Committee I'm Vice Chair Dave Rohy and Presiding Member of this Committee. Second to my left is Michal Moore, Commissioner Michal Moore on the Committee. To my right is Bob Eller, my Advisor. And to Commissioner Moore's left is Shawn Pittard, his Advisor. In the center is our Hearing Officer, Susan Gefter.

I would like to ask the Applicant to introduce themselves.

**MR. THOMPSON:** Thank you.

My name is Allan Thompson representing Enron. And to my left is Mr. Sam Wehn, Project Manager for Enron.

**PRESIDING MEMBER ROHY:** Thank you.

Staff.

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**MS. ICHIEN:** Good afternoon. My name is Arlene Ichien. I'm an Attorney for the Staff. On my right is Lorraine White, Project Manager for this case.

**PRESIDING MEMBER ROHY:** The Intervenors.

**MS. STRACHAN:** Susan Strachan from the Delta Energy Center.

**MS. POOLE:** Kate Poole for CURE is on the phone.

**MS. LAGANA:** Paulette Lagana with CAP-IT is on the phone.

**PUBLIC ADVISOR MENDONCA:** Roberta Mendonca, Public Advisor, is on the phone.

**MR. HALL:** Jack Hall, City of Antioch, is on the phone.

**MS. STRACHAN:** Susan Strachan, Delta Energy Center, in person.

**HEARING OFFICER GEFTER:** I'm going to take a break. Let's go off the record for one moment.

(Momentarily off the record.)

**HEARING OFFICER GEFTER:** Back on the record.

**PRESIDING MEMBER ROHY:** I think I heard City of Antioch. Are there other agencies here or on the telephone?

**MR. SAVELL:** Yes. Dewey Savell, Contra Costa County Fire.

**MR. RYAN:** Richard Ryan, Contra Costa County Fire District.

**MR. JANG:** Dennis Jang, Bay Area Air Quality.

**PRESIDING MEMBER ROHY:** Any others?

On the telephone?

Members of the public who would like to introduce themselves?

(No response.)

**PRESIDING MEMBER ROHY:** With that I will turn over the proceedings to Ms. Gefter.

**HEARING OFFICER GEFTER:** The background for this Hearing is on June 1st the Committee issued a notice scheduling today's Hearing on the Final Determination of Compliance issued by the Bay Area Air Quality Management District.

The Air District released the FDOC on June 10th. The Applicant docketed the FDOC with the Commission on June 11th. The Committee had indicated in previous notices that the AFC schedule would slip day for day for every day from May 26th that the FDOC were not docketed by the Applicant. Accordingly, the schedule has now slipped 16 days.

We anticipate that the Presiding Member's Proposed Decision will be issued by the end of June. We will discuss the schedule at the conclusion of today's Hearing.

We understand Mr. Ryan from the Contra Costa Fire Department wishes to address the Committee this afternoon. We will take your comments prior to Hearing testimony on the Final DOC.

The purpose of today's Hearing is to receive the Final DOC into the record and to also take testimony on the conditions and other matters that are contained FDOC. We expect that Staff will sponsor the witness from the Air District, and the order of testimony that we will hear will go as follows:

We will hear the Applicant first, then we will hear Staff, and then apparently CURE is not here today -- is CURE there?

**PRESIDING MEMBER ROHY:** Yes.

**MS. POOLE:** Yes. Kate Poole is on the phone.

**HEARING OFFICER GEFTER:** Thank you.

Okay. -- City of Antioch, CAP-IT and then Delta. And that would be the order in which we will take testimony.

The other matter before we begin is the exhibit list. I distributed copies of the current exhibit list to the parties. I have some more copies if anyone else wants it. I wanted to ask the parties to take a look at the exhibit list to make sure that it's accurate. And we'll



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discuss that at the end of the Hearing as well, because I expect we will be admitting a few more pieces of evidence today.

At this point in time we're going to take comments from the Contra Costa Fire Department. We understand you have sent two letters to the Commission.

**MR. SAVELL:** That's true.

**HEARING OFFICER GEFTER:** And we also would like you to come forward or, if you want to sit where you are, speak up so the people on the phone can hear you. And we'll listen to your comments.

You understand that your comments are not evidence today, but it's information that you're providing to the Committee at this point.

**MR. RYAN:** Yes, we do understand that.

**HEARING OFFICER GEFTER:** Okay.

**MR. RYAN:** Good afternoon. My name is Richard Ryan. I'm a Fire Inspector with the Contra Costa County Fire Protection District. The County Fire Protection District provides fire protection, fire prevention/rescue services and emergency medical services to the proposed facility.

The concerns the Fire District have is because it is within a redevelopment area we do not receive any funding, either through pass-through funding through the Redevelopment Area Agency, nor do we receive any property taxes to protect this facility.

The Fire District is attempting to replace some equipment, some fire equipment, which is located in the Fire Station 84, which protects this particular complex, because of age of the equipment.

We have a fire engine which is approximately 16 years old and has over 87,000 miles on it. And also we have a ladder truck, a hundred-foot ladder truck, at the same fire station which is a 1983 model.

What we attempt to do by County Board of Supervisor policy is replace all fire equipment when it is 15 years of age or older. Both of these pieces of equipment exceed that age.

Because we do not have either pass-through funding or property taxes we are unable to replace this equipment. What the Fire District is asking for is the replacement of these two pieces of equipment, which will protect this facility.

If this complex was not within a redevelopment area, the Fire District would receive through property taxes approximately 200,000 to \$420,000 per year for the life of the plant, which I believe is approximately 30 years or so. Because it is in a redevelopment area we receive no funding whatsoever.

The cost of the fire equipment is approximately \$325,000 -- let me get it here. Approximately --

**PUBLIC ADVISOR MENDONCA:** I'm sorry, but we can't hear.

**MR. RYAN:** Yes. Approximately \$350,000 for the fire engine and approximately \$600,000 for a ladder truck. The Fire District is requesting that these two pieces of equipment be provided by the Applicant and be in service or available to us prior to the start-up of the facility.

**COMMISSIONER MOORE:** I have a couple of questions. First of all, what's the other source of funding for your District; is it a CSA or a CSD?

**MR. RYAN:** It is by property taxes.

**COMMISSIONER MOORE:** All by property taxes and you get what mill rate?

**MR. RYAN:** I don't know the mill rate, but we get approximately -- of the one percent of the assessed valuation, we get between 10 and 14 percent of that.

**COMMISSIONER MOORE:** And how many people are represented in your District, within the boundary, in round numbers, please?

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**MR. RYAN:** Well, we have a total of 28 fire stations. We protect approximately 350 to 400 square miles of territory, which includes nine incorporated cities and a good portion of the unincorporated area of the County. I believe we have approximately 300 to 350 firefighters. And with administration, staff, secretaries, we're right at 400 personnel.

**COMMISSIONER MOORE:** So for every other portion of the District it's not within an incorporated, city redevelopment area you're actually getting a fractional proportion of the "P" tax that's coming back to you?

**MR. RYAN:** That is correct. Yes.

**COMMISSIONER MOORE:** And right now the substation that houses the equipment you're talking about is how far away from this site? Round numbers will be fine.

**MR. RYAN:** I believe it's --

**MR. SAVELL:** Six-tenths.

**MR. RYAN:** -- six-tenths of a mile.

**COMMISSIONER MOORE:** Six-tenths. And what would you guess that the geographic or real distance is, radial distance is, that you serve out of that substation?

**MR. SAVELL:** Usually we try to hold that to a mile and a half, typical.

**COMMISSIONER MOORE:** So you said you had 28 subs?

**MR. RYAN:** Twenty-eight fire stations, correct.

**COMMISSIONER MOORE:** Twenty-eight subs. Okay. And so out of each one of those you try and maintain a mile-and-a-half radius?

**MR. SAVELL:** Yes.

**MR. RYAN:** Yes.

**MR. SAVELL:** It's predicated on a five-minute response 90 percent of the time, is the criteria that we try to stay within.

**COMMISSIONER MOORE:** And within an incorporated area, where the fire suppression is normally provided by a city fire department, you're providing ancillary services that you named: Rescue services or --

**MR. RYAN:** Yes. The City of Pittsburg does not have its own city fire department. We are the fire protection agency.

**COMMISSIONER MOORE:** So they depend on you for that, and they do it under a contract annualized --

**MR. RYAN:** No. They are part of the Fire District. They are not under contract.

**COMMISSIONER MOORE:** Got you. And within that then what would you say this site is as a proportional, a real share of the service territory you have for that substation?

**MR. SAVELL:** I don't know if I totally understand. You mean what percentage --

**COMMISSIONER MOORE:** Well, if this was 10 acres and you had a hundred-acre zone, you would be 10 percent of that zone?

**MR. SAVELL:** We don't look at it that way. I guess I'm not familiar with trying to separate it out in that context.

**COMMISSIONER MOORE:** I'm just trying to get the proportional impact of this facility on your manning and your capital needs there at that substation.

**MR. SAVELL:** They would remain the same regardless of whether the facility was there or not, because that's -- I don't know what the call volume is going to be to the facility at this point. It would be hard to anticipate it.

**COMMISSIONER MOORE:** Okay. Thank you.

**PRESIDING MEMBER ROHY:** All right. What you said is you're looking for new equipment but not additional equipment; is that correct?

**MR. SAVELL:** That's true.

**MR. RYAN:** That is correct. Yes, we're looking for replacement.

**PRESIDING MEMBER ROHY:** Replacement equipment. So the hundred-foot ladder is not because of any requirement of this facility?

**MR. SAVELL:** It's for the response area in general.

**PRESIDING MEMBER ROHY:** Okay.

**MR. SAVELL:** That's not the only plant that's in that area. You have Dow Chemical, U.S. Steel, POSCO. You have a PG&E power plant in that first-in response area.

**HEARING OFFICER GEFTER:** Is the proposed Delta Energy Center also going to be in that response area?

**MR. SAVELL:** Yes.

**PRESIDING MEMBER ROHY:** May I ask about the other comments in the letter? You commented about sprinklering of the facility. Perhaps I used the word incorrectly here but, yes, fire-sprinklered, including the cooling tower.

**MR. RYAN:** Yes, that is correct. Those are out of the Uniform Fire Code which was adopted by the California Fire Code, which was adopted by the State of California and also by the Fire District. And we also go by the National Fire Protection Association's standards. If a cooling tower is made out of wood or a combustible material, it's required to be fire-sprinklered.

**PRESIDING MEMBER ROHY:** Have you examined the plans for this facility?

**MR. RYAN:** Not in detail, no.

**PRESIDING MEMBER ROHY:** Do you know whether, in your opinion, these facilities have sprinklers included or not?

**MR. RYAN:** I believe they will have them.

**PRESIDING MEMBER ROHY:** So this issue you bring up in the letter is not something you feel the Applicant failed to address?

**MR. RYAN:** Yes, that's correct.

**PRESIDING MEMBER ROHY:** I asked a double negative. I apologize. Do you believe the Applicant addressed that issue?

**MR. RYAN:** It appears that the Applicant has addressed the issue.

**PRESIDING MEMBER ROHY:** Thank you.

**HEARING OFFICER GEFTER:** Any other questions from the Committee? Are there comments from -- I understand Staff has some comments on this issue.

**MS. ICHIEN:** Well, I have comments in the way of a suggestion in dealing with the issue, if now is the appropriate time.

Given that the Fire District has raised this issue relatively late in the process, Staff is nevertheless willing to confer with the District and with other parties and the Applicant to try to reach a better understanding and also reach a resolution, an agreement, if that's reasonable.

And what I'd like to suggest is that the Staff be allowed to convene at least one workshop as soon as possible with the purpose of trying to reach agreement among the parties. And this would also extend to the Delta Applicant, to Calpine, to try to reach agreement regarding the issue of replacement equipment. And then report back to the Committee as soon as possible, but in no event later than the close of the comment period of the PMPD and hopefully in advance of that.

**HEARING OFFICER GEFTER:** When would you propose to issue a notice of workshop?

**MS. ICHIEN:** We would do it as soon as possible. And we are assuming that there is a 10-day notice requirement. But in the interim we would still be conferring with the District as soon as possible in trying to get a better grip on this issue.

And then we would hopefully come back with an agreement or an agreed-upon way to deal with this issue in a way that's acceptable to the Applicant as well as the District.

**HEARING OFFICER GEFTER:** Does the Applicant have any comment?

**MR. THOMPSON:** Just a couple things. As we all recognize, the record in this proceeding has been closed except for the FDOC issues. Having said that we would like to accommodate the Fire Department. We have more questions than answers right now, and I think that this is an acceptable way to go.

If it is going to be a workshop with both ourselves and the Delta Facility, I don't know if it would be noticed under both of those dockets. We would like to be able to seek some resolution that does not delay our proceeding, I guess.

**MS. ICHIEN:** And Staff is mindful of the Applicant's wish regarding the schedule.

**PRESIDING MEMBER ROHY:** Your suggestion is to have a Staff workshop, though, not a Committee workshop; is that correct?

**MS. ICHIEN:** That's correct. Initially a Staff workshop, and then to bring back the result of that workshop, hopefully an agreement, to the Committee and possibly a request at that time, hopefully a joint request to reopen the record, if that's what's needed, to then enter what agreement we have.

**HEARING OFFICER GEFTER:** We're going to take a minute or two for the Committee to have a little conference, so we'll go off the record.

(Briefly off the record from 2:23 p.m. to 2:26 p.m.)

**COMMISSIONER MOORE:** What we have concluded is that we are going to accept the idea that there ought to be a workshop done in such a way there won't be a delay in the schedule. We would like to give a little bit of guidance to this.

The Committee would like to point out that putting the costs, the full costs of these kinds of improvements, should they be agreed to, should they be recognized as

necessary on one applicant, is unreasonable. We can't go down that road. We've got other applicants coming in within the same reach. There are other industrial customers who are there who would benefit from this. So there's going to have to be a proportional benefit test of some kind applied. I'm not going to describe it, because I don't know it. The Chief is going to know that a lot better than any of us.

But in terms of giving some guidance to this, we suggest that such a workplace is proper. It ought to take place as soon as possible. The Fire District ought to be accommodated to the extent that we can. It's an important player in the game. But there ought to be a proportional benefit test applied of some kind, keeping in mind that there are other facilities that are following and will be a subject of future proceedings.

We don't have a way to lock in any of the other industrial players who already exist in the area. I wish we did, but we don't. And that's going to be left to the good offices of the Chief and/or the District Manager to negotiate that, but a proportional share should be the objective of this. And we think that's fair and ought to dictate the discussion and, frankly, the conclusions. Thank you.

**HEARING OFFICER GEFTER:** Thank you.

And the way this would work procedurally is that Staff will conduct the workshop. The PMPD would be issued as scheduled and the outcome of the workshop or workshops would be presented to the Committee at the end of the comment period on the PMPD. A conference will be scheduled. And at that time we will also schedule a tentative evidentiary hearing to take any evidence that may relate to any kind of agreement with the Fire Department.

With that, are there any comments? I'll start with the Applicant.

**MR. THOMPSON:** On this issue?

**HEARING OFFICER GEFTER:** Yes, on the process.



**MR. THOMPSON:** No, except that I think we do have some flexibility. This plant isn't going to be online for a couple of years, and we've got some time. So I suspect that there may be avenues for resolution that don't affect this timetable, either through the good offices of the Calpine project or independently of that. So I think we would like to explore that with those of us who are going to be participating in this conference.

**HEARING OFFICER GEFTER:** Thank you.

Does Staff have any comment?

**MS. ICHIEN:** No, but we appreciate the guidance Commissioner Moore has provided. And I agree that we need to be mindful of the proportional allocation of the cost of replacement equipment among those who are being benefitted by the Fire Department's equipment.

**HEARING OFFICER GEFTER:** Thank you.

I'd like to ask whether any of the Intervenors who are on the phone have any comments.

Does CURE have any comments?

**MS. POOLE:** No comments.

**HEARING OFFICER GEFTER:** Okay. What about the City of Pittsburg -- the City of Antioch?

**MR. HALL:** No comment.

**HEARING OFFICER GEFTER:** That's from Antioch.

Okay. CAP-IT?

**MS. LAGANA:** No comment.

**HEARING OFFICER GEFTER:** Okay. Thank you.

Are there any public comments?

Does Delta have any comment?

**MS. STRACHAN:** No. We will be happy to participate in the workshop.

**HEARING OFFICER GEFTER:** Thank you.

There's a member of the public who raised his hand. Could you identify yourself for the record, please?

**MR. MacDONALD:** Yes. My name is Jim MacDonald. I'm a resident of Pittsburg, California. And I would like to address the Committee when it's in the proper frame. I do have some environmental justice issues which I wish to bring to your attention.

**HEARING OFFICER GEFTER:** Okay. This is on the Fire Department.

**MR. MacDONALD:** Okay. All right.

**HEARING OFFICER GEFTER:** Thank you.

**MR. MacDONALD:** Thank you.

**HEARING OFFICER GEFTER:** We will speak with Mr. MacDonald later, at the end of the Hearing.

At this point I think the issue raised by the Contra Costa County Fire District has been taken care of at this point in the proceeding.

The Applicant has another comment.

**MR. THOMPSON:** Yes. Finally, I would like to thank the representatives of Contra Costa Fire for coming up here. I know it's a burden on you. I appreciate the position you're in. And we will try and work something out to your satisfaction.

**HEARING OFFICER GEFTER:** Thank you.

**MR. SAVELL:** Thank you.

**MR. RYAN:** Thank you.

**MR. SAVELL:** We thank the Commission.

**HEARING OFFICER GEFTER:** We're going to go with the Hearing on the Final DOC, and then we will take public comments on this issue or other issues at the conclusion of the testimony on the Final Determination of Compliance.

With that we would like to begin with the Applicant. I don't know if you are presenting any witnesses on this topic, but please begin.

**MR. THOMPSON:** We do have a witness. I would like to present Sam Wehn to discuss the Applicant's review of the Final DOC and the Commission Staff testimony. I suspect you may want to assign numbers to those for clarity? I'm not moving these. So if it's okay with the other parties could I ask for the next exhibit in order for the Final Determination of Compliance?

**HEARING OFFICER GEFTER:** The next exhibit in order would be Exhibit 49.

(Exhibit 49 identified as the Final Determination of Compliance.)

**MR. THOMPSON:** And if it's acceptable to the Staff, if I could ask that the next exhibit in order be a document called the "Revised Air Quality Testimony to the Pittsburg District Energy Facility Staff Assessment."

**HEARING OFFICER GEFTER:** This will be Staff's Revised Air Quality Testimony?

**MR. THOMPSON:** Yes. Dated June 15.

**HEARING OFFICER GEFTER:** The next in order is Exhibit 50. We could identify that as Exhibit 50. I would like to have the Staff sponsor their testimony.

(Exhibit 50 identified as the Revised Air Quality Testimony to the Pittsburg District Energy Facility Staff Assessment.)

**MR. THOMPSON:** As I said, all I'm looking for is a number.

**HEARING OFFICER GEFTER:** Okay.

**MR. THOMPSON:** The Applicant would like to present Mr. Sam Wehn, who has previously been sworn in previous hearings in this matter.

(Samuel L. Wehn, called as a witness by the Applicant, previously sworn.)

DIRECT EXAMINATION

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Q. (By Mr. Thompson) Mr. Wehn, would you state your name for the record?

A. Yes. Samuel Wehn.

Q. And are you the same Samuel Wehn who has testified in this proceeding and whose qualifications are contained in the record?

A. Yes, I am.

Q. And with regard to the issues before us today, have you reviewed the document labeled Exhibit 49, the Final DOC of the Bay Area AQMD?

A. Yes, I have.

Q. And have you also reviewed Exhibit 50, which is the Revised Air Quality Testimony of the Staff?

A. Yes, I have.

Q. Do you have any comments to make on that material?

A. No, I do not.

Q. On behalf of the Applicant, Enron, do you accept the conditions of certification and the verification of those conditions contained in Exhibit 50?

A. Yes, I do.

Q. Inasmuch as this is the final Hearing day in the record, on behalf of the Applicant, do you accept all of the conditions of certification and verification thereto in all areas that have been submitted by the Staff in this proceeding?

A. Yes, I do.

**MR. THOMPSON:** Thank you very much.

That completes our direct testimony.

**HEARING OFFICER GEFTER:** Does Staff have any cross-examination of the witness?

**MS. ICHIEN:** One or two questions for clarification.

CROSS-EXAMINATION

Q. (By Ms. Ichien) Has the Applicant submitted all of its option contracts that it intended to submit to evidence, having obtained or secured the right to purchase the offsets?

A. Yes, we did. We submitted the memorandums of those agreements and -- for all of the credits. So actually I have certificates for a portion of the credits, and then I have option contracts for the balance. And they're all docketed with the Commission.

**MS. ICHIEN:** Those are all the questions I have.

**HEARING OFFICER GEFTER:** Mr. Wehn, could you tell me the dates those items were docketed? We don't have to do it right now, but I would like to have that before the record closes. And that way we can track them down as well for the record. Because I don't believe they were submitted as pieces of evidence into the record. Before we close the Hearing today we should get that information.

**THE WITNESS:** I may have to make a phone call to get.

**HEARING OFFICER GEFTER:** That would be fine. We'll take care of it.

I wanted to ask if any of the Intervenors have any questions for Mr. Wehn. Does CURE have any questions?

**MS. POOLE:** No, I do not.

**HEARING OFFICER GEFTER:** Does the City of Antioch have any questions?

**MR. HALL:** No questions.

**HEARING OFFICER GEFTER:** Does CAP-IT have any questions of Mr. Wehn?

**MS. LAGANA:** No. No questions.

**HEARING OFFICER GEFTER:** And Delta?

**MS. STRACHAN:** No questions.

**HEARING OFFICER GEFTER:** Thank you.

(Witness excused.)

**HEARING OFFICER GEFTER:** At this point we would ask Staff then to come forward with your witness.

**MS. ICHIEN:** Thank you. I call Dennis Jang.

**HEARING OFFICER GEFTER:** Mr. Jang, if you could come forward so that we could hear you better and the people on the phone could hear you as well. Perhaps it would be good if you sat at one of these chairs here. Thank you.

**MS. ICHIEN:** And Mr. Jang has been previously sworn.

(Dennis T Jang, Staff's witness, previously sworn.)

**DIRECT EXAMINATION**

Q. (By Ms. Ichien) For the record would you please state your name, your occupation and who you are representing today?

A. My name is Dennis Jang. I am an Air Quality Engineer with the Bay Area Air Quality Management District.

Q. Has the Bay Area Air Quality Management District issued its Final Determination of Compliance for the Pittsburg Project?

A. Yes. That was issued on Thursday, June 10th.

Q. Do you know if copies were sent to the Applicant and other parties?

A. Yes. We sent a copy to the Applicant and an email copy to the ARB and the Energy Commission.

Q. Do you have with you a copy of the Final Determination of Compliance?

A. Yes, I do.

Q. Are you familiar with the contents?

A. Yes.

Q. Did you, in fact, prepare the Final Determination of Compliance on behalf of the District?

A. Yes, I did. I wrote it.

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Q. Since its issuance on June 10 have there been any changes made to the Final Determination?

A. There have been some minor changes relating to condition numbers and the other issues related -- well, since the 10th it's primarily been condition numbers, yeah. Yes.

Q. So a renumbering of the conditions?

A. Essentially, yes.

Q. Nothing substantive?

A. The one issue relating to the provision of offsets, in order to be consistent with the Energy Commission Staff, we had required that the offsets be provided prior to construction of the facility. Prior to that we, as a policy, the District requires the offsets prior to the permit-to-operate issuance.

Q. Are there any additional changes that you wish to make to the Final document today?

A. No.

Q. Since issuance of the Preliminary Determination of Compliance what substantive changes, if any, have been made?

A. There have been several changes relating to BACT for nitrogen oxides. In the Preliminary the NOx limit was 2.5 ppm averaged over three hours.

The Applicant approached -- in response to comments from EPA and ARB, the Applicant went forward and proposed a one-hour average with allowances for excursions caused by transient conditions. And that has been agreed upon by the EPA, the ARB and the District. And that is reflected in the Final DOC.

**HEARING OFFICER GEFTER:** May I interrupt for a moment? Would it be possible for the witness to refer to the conditions --

**THE WITNESS:** Sure.

**HEARING OFFICER GEFTER:** -- in the FDOC that you're talking about, because I think Staff's conditions may or may not be the same as the numbers of the conditions in the FDOC. So if you were referring to FDOC conditions, if you could identify those for us, please.

**THE WITNESS:** Okay. Condition 21(b) was changed from -- the averaging period was changed from three hours to one hour.

And Condition 22 was added, and that is essentially the excursion language.

The BACT specification for POC emissions has been reduced. In the Preliminary it was .004 pounds per million Btu. That has been revised to .00136 to reflect revised vendor estimates and abatement from the CO catalyst.

**HEARING OFFICER GEFTER:** Is that in a condition?

**THE WITNESS:** Yes, that is. That's -- sorry -- that's Condition 21(f), I think.

The other issue I already mentioned related to the timing of the provision of offsets.

Q. (By Ms. Ichien) Are those all the substantive changes?

A. Yes, they are.

Sorry.

Q. I didn't know if you were looking through the document for additional substantive changes.

A. No. I'm just browsing, I guess.

Q. With respect to all the offsets that are required for this Project, does the Final Determination of Compliance certify that they have all been obtained?

A. The FDOC verifies that the offsets are valid and that they are in sufficient quantities to offset the increases from the Project.

Q. And what are the major conclusions then of the Final Determination of Compliance?



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A. We have found that the gas turbines heat recovery steam generators and auxiliary boiler will comply with the best available control technology requirement of the District New Source Review Regulation.

The facility will comply with the emission offset requirement. It has complied by demonstrating that they have control of valid emission reduction credits in sufficient quantities.

We find that the facility has complied with our Toxic Risk Management Policy. They performed a District-approved health risk assessment. The results of that assessment show that the increased health risk to the public is not significant.

Their quality impact analysis, that was submitted by the Applicant, was based upon EPA-approved models, calculation procedures. It was performed in accordance with District regulations. And it, further, showed that the facility will not interfere with the attainment or maintenance of the applicable ambient air quality standards.

Q. One last question. Do you have before you a Final Draft of the FDOC that contains all of the corrections that you have made since the June 10th issuance?

A. Yes, I do.

**MS. ICHIEN:** And I would ask the Committee to then accept this as a Revised Exhibit 49. And we will provide sufficient copies for all the parties as well. But this copy that Mr. Jang has today does reflect all of the changes, the nonsubstantive changes that were made since June 10th, as well as all of the changes that he summarized.

**HEARING OFFICER GEFTER:** By "nonsubstantive changes," do you mean edits and typos and that sort of thing?

**MS. ICHIEN:** Yes.

Q. (By Ms. Ichien) In fact, Mr. Jang, do you have before you a copy of the Staff's Revised Testimony that is dated June 15, 1999?

A. Yes, I do.

Q. And have you had a chance to look at the Summary of changes that are reflected in the Staff's Revised Testimony on the cover page?

A. Actually I -- I got the Conditions only, so I didn't actually read the Summary.

**MS. ICHIEN:** I was just going to point out that the cover letter to the Staff's Revised Testimony does have a list summarizing the nature of the changes that were made. So I can have the Staff witness testify to that.

**HEARING OFFICER GEFTER:** Thank you.

**MS. ICHIEN:** With that I would like to move Exhibit 49 into the record.

**HEARING OFFICER GEFTER:** Is there any objection to the admission of Exhibit 49, which is the Final Determination of Compliance as edited to reflect minor typographical changes since June 10th? Any objection?

**MR. THOMPSON:** I'm afraid I'm not following here. Are there changes to the exhibit, to the FDOC that we haven't seen, or are there changes to the District's FDOC that was signed by the District that appear here? I'm clearly not following.

**MS. ICHIEN:** Yes.

Q. (By Ms. Ichien) Mr. Jang, would you clarify, please, what your Final Draft contains in the way of changes from the June 10 FDOC that was sent to the Applicant?

**MR. THOMPSON:** Pardon me. I have no problem with that. I know that there were changes between those two. I guess I would ask Staff's indulgence to maybe mark this Exhibit 51. I would prefer that the Final DOC as signed by the District be kind of a clean copy. And I think what you're talking about are the changes between the Draft FDOC and the Final DOC.

**MS. ICHIEN:** Yes.

**MR. THOMPSON:** And I would suggest -- that's not what we're talking about?

**MS. ICHIEN:** Oh, actually -- no, that's not true. The Final DOC was issued on June 10th.

**MR. THOMPSON:** Yes.

**MS. ICHIEN:** Since June 10 there were some corrections made in renumbering the conditions, as Mr. Jang testified earlier. They are nonsubstantive changes and they have to do with renumbering of the conditions and making corrections to numbered conditions.

**MR. THOMPSON:** Is the District going to --

**COMMISSIONER MOORE:** You're asking if the District is going to re-issue

--

**MR. THOMPSON:** Yes.

**COMMISSIONER MOORE:** -- the DOC; is that right?

**MR. THOMPSON:** Which I clearly don't want to see.

**COMMISSIONER MOORE:** And the answer is n-o?

**THE WITNESS:** No, no. I mean --

**PRESIDING MEMBER ROHY:** I would go along with them. And my view is that the original one that was signed should be the exhibit.

**COMMISSIONER MOORE:** If there are nonsubstantial changes, I would agree with that. I can't say why the Applicant wouldn't think that was the right thing to do as well.

**MR. THOMPSON:** And we clearly have no problem with the changes that the Staff has made in the renumbering in those in Exhibit 50, and would recommend to the Committee that they use Exhibit 50 which has those numbering changes as the basis for the Decision.

**COMMISSIONER MOORE:** It sounds okay to me.

**PRESIDING MEMBER ROHY:** I think what the Committee is saying here is let's maintain the original June 10th FDOC as Exhibit 49.

Ms. Ichien, Staff's position?

**MS. ICHIEN:** I think that would be fine. And then the Staff witness can testify as to the nonsubstantive changes that were made and are reflected in Staff's Revised Testimony with the District's concurrence.

So to the extent there is some inconsistency between the Final DOC and Staff's Revised Conditions, hopefully the Staff testimony will be able to explain those differences. And, as Mr. Jang indicated, the District didn't have any objection to those nonsubstantive changes.

**PRESIDING MEMBER ROHY:** And that would all be in the record so that -  
-

**MS. ICHIEN:** Yes.

**PRESIDING MEMBER ROHY:** -- we will understand how they came about.

**HEARING OFFICER GEFTER:** So the motion to offer the Final DOC into the record as Exhibit 49 is the Final DOC that was docketed by the Applicant on June 11th, and that would be Exhibit 49.

Is there any objection to that being received into evidence?

**MS. ICHIEN:** No objection.

**MR. THOMPSON:** None.

**HEARING OFFICER GEFTER:** Any objection from any of the Intervenors who are on the phone? Any objection?

**MS. POOLE:** No objection.

**MR. HALL:** No objection.

**MS. LAGANA:** No objection.

**HEARING OFFICER GEFTER:** Thank you.

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And from Delta?

**MS. STRACHAN:** No objection.

**HEARING OFFICER GEFTER:** Okay. Exhibit 49 is now admitted into the record. Thank you.

(Exhibit 49, the Final Determination of Compliance, received in evidence.)

**MS. ICHIEN:** Mr. Jang is available for questions.

**HEARING OFFICER GEFTER:** Does the Applicant have any questions for the witness?

**MR. THOMPSON:** No, except that I would like to make a comment. And this really pertains to all of the agencies that have worked with us over the past two weeks. It has been long hours and a great deal of work, and we are appreciative of the efforts.

You will note in the Final DOC that there is the excursion language. I fortunately wasn't involved in the crafting of that, but you can understand how difficult that language is. And all parties involved were diligent and worked extremely hard to assist us in coming up with language that was acceptable, and we are very appreciative of that.

**HEARING OFFICER GEFTER:** Are there any questions of the witness from CURE?

**MS. POOLE:** No.

**HEARING OFFICER GEFTER:** From the City of Antioch?

**MR. HALL:** No.

**HEARING OFFICER GEFTER:** From CAP-IT?

**MS. LAGANA:** No.

**HEARING OFFICER GEFTER:** From Delta?

**MS. STRACHAN:** No.

**HEARING OFFICER GEFTER:** From our Committee?

**PRESIDING MEMBER ROHY:** None.

**MS. ICHIEN:** Ms. Gefter?

**HEARING OFFICER GEFTER:** Yes.

**MS. ICHIEN:** Excuse me. If it would help in avoiding any confusion over nonsubstantive changes, would the Committee appreciate a strike-out and underlined version of the June 10 FDOC so that at least in the form of errata you would be able to track the nonsubstantive changes that have been made?

**HEARING OFFICER GEFTER:** I think that would be very helpful. Thank you.

**MS. ICHIEN:** So then I would suggest that the District, with the Staff's assistance, offer errata then to the June 10 FDOC. Is that acceptable?

**PRESIDING MEMBER ROHY:** Could I say that not "errata," but maybe "clarifications." "Errata" implies there was an error in the original document. And I would not like to reflect that the Exhibit, I believe 49, has errors in it. I just want to be very clear that 49 is the Final Determination of Compliance. If that is the case, then that should be the Final Determination of Compliance.

**THE WITNESS:** Yes, it is. It is the Final. And there were absolutely no mistakes. I can attest to that.

**MR. THOMPSON:** Do you want to reserve an exhibit number for a late-filed exhibit, although I don't know that it needs to be elevated to the rank of exhibits.

**MS. ICHIEN:** I defer to the Committee and Ms. Gefter. If it helps in keeping track of the paper...

**HEARING OFFICER GEFTER:** We could have that marked as Exhibit 51, and that would be called "Clarifications to Corrections," or something along those lines, and that way --

**MS. ICHIEN:** "Clarifications to the Final DOC."

**HEARING OFFICER GEFTER:** Yes. And that would be Exhibit 51.

And even though we haven't seen that yet, I expect that it will reflect the list that is on page 1 of Exhibit 50, which is Staff's Testimony. Is that correct?

**MS. ICHIEN:** Yes.

**HEARING OFFICER GEFTER:** So why don't we identify that prospective document as Exhibit 51. That will be "Clarifications to the FDOC."

(Exhibit 51, "Clarifications to the FDOC" will be identified and received in evidence at a later time/date.)

EXAMINATION BY THE HEARING OFFICER

Q. (By Hearing Officer Gefter) Mr. Jang, you had mentioned one of the new agreements that is included in the Final DOC is a reduction in the -- was it the POC that was reduced to .00136? You had testified to --

A. Yeah. I --

Q. -- that, and I can't find a condition on that.

A. You know, I think it's -- right. You know what, I think it's -- that was what I was puzzling over earlier. I believe my Summary sheet is in error. It was -- it was .0017. It was changed to .0017, I should say.

**PRESIDING MEMBER ROHY:** Which is reflected in Exhibit 49, the Final Determination of Compliance?

**THE WITNESS:** That's correct. That is the correct number.

Q. (By Hearing Officer Gefter) Is there a condition that that is the --

A. Yes. And that is -- that is Condition 21(f).

Q. 21(f). Okay. I found it. Thank you.

And the excursion language which appears in Condition 22(a), is that the language that Applicant was referring to previously?

A. Yes. It's -- there's actually (a) through (g). But, yes, that's 22, Condition 22.

**HEARING OFFICER GEFTER:** Okay. Thank you.

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Do we have any other questions of the witness?

Okay. The witness may be excused. Thank you.

(Witness excused.)

**HEARING OFFICER GEFTER:** Does the staff have another witness?

**MS. ICHIEN:** Yes. Guido Franco.

And Mr. Guido has been sworn previously.

(Guido Franco, called as a witness by Staff, previously sworn.)

DIRECT EXAMINATION

Q. (By Ms. Ichien) But for the record today, would you please state your name?

A. My name is Guido, G-u-i-d-o, Franco.

Q. Thank you.

And have you reviewed a copy of the Final Determination of Compliance?

A. Yes.

Q. Does the Final Determination of Compliance change the testimony that you submitted on March 10 and/or May 14 of this year?

A. Yes. For that reason we have submitted a Revised Conditions of Certification that reflects the changes in the Final DOC.

Q. Do you have before you a copy of Exhibit 50, which is the Revised Staff Testimony dated June 15, 1999?

A. Yes, I do.

Q. And is this the written testimony that reflects the changes that the FDOC has caused --

A. Yes.

Q. -- to the Staff Testimony?

A. Um-hum.



Q. On page 1 of that exhibit is a cover letter from the Project Manager, Lorraine White. And on the first two pages is a list summarizing the nature of the changes to the Staff's Testimony. Have you reviewed that list that is in response to the cover memo?

A. Yes. I reviewed that list.

Q. And does that list accurately summarize the nature of the changes to the Staff's Testimony?

A. Yes, it does.

Q. Do you have any corrections or changes you wish to make to your Testimony?

A. Yes, indeed. Conditions of Certification, the Definition Section, that is the first page in the Conditions of Certification, there is in the definition for the auxiliary boiler shutdown, the existing document refers to Conditions 27(a) through 27(d) --

**HEARING OFFICER GEFTER:** I'm sorry. I don't know which condition you're looking at. What --

**THE WITNESS:** I'm looking at the Definition Section.

**HEARING OFFICER GEFTER:** Definitions, okay.

**THE WITNESS:** It says "Auxiliary boiler shutdown."

**HEARING OFFICER GEFTER:** Yes.

**THE WITNESS:** That definition refers to Conditions 27(a) to 27(d), when actually it should be 28(a) through 28(d).

**HEARING OFFICER GEFTER:** My copy says 28(a) and 28(d).

**MR. THOMPSON:** I think you're a line up. At least I was the first time I read it.

**HEARING OFFICER GEFTER:** Oh, okay. Got it. Thank you.

For the people who are on the phone, you may not have a copy of this Testimony.

Does CURE have a copy of this?

**MS. POOLE:** No, I do not.

**HEARING OFFICER GEFTER:** And does Antioch?

**MR. HALL:** No, I do not.

**HEARING OFFICER GEFTER:** Okay. I was going to, in the middle of testimony here, ask Ms. White whether this testimony is now on the web for the Energy Commission.

**MS. WHITE:** It is currently on the web for the Energy Commission. It was docketed today, later this morning. We have not had an opportunity to fax it to all parties for their review.

**HEARING OFFICER GEFTER:** Thank you.

**MS. POOLE:** It's on the web now?

**MS. WHITE:** Yes. Under our web site for the Pittsburgh District Energy Facility Siting Case. If you go to our web page it's under the Licensing, the Siting Cases, for Pittsburgh District Energy Facility.

Q. (By Ms. Ichien) Mr. Franco, do you have any other changes or corrections?

A. No, I don't.

Q. So is this the Testimony as submitted and corrected correct to the best of your knowledge?

A. Yes, it is.

Q. What are the major changes to the Conditions as compared with your Testimony of March 10 and May 14?

A. Yeah. Basically the major changes are to make it compatible and in full agreement with the final Determination of Compliance. Therefore it includes changes to the BACT -- I mean the language related to BACT, or Best Available Control Technology for NO<sub>x</sub> and POC.

Also the daily emissions for both NO<sub>x</sub> and POC have been -- have changed. Also the -- since the VO<sub>x</sub> emissions have gone down, the amount of offsets that will be needed has also gone down.

Finally, Condition 53 is a new condition, requiring the Applicant to use first the offsets that were generated in the City of Antioch before they can use offsets outside the local area.

The Applicant has agreed to these conditions -- I mean we're just formalizing an agreement or the desire to still have local offsets as much as possible. And also the desire of the Applicant to get local offsets also as much as possible.

**MS. ICHIEN:** Thank you.

With that I'd like to move Exhibit 50 into the record.

**HEARING OFFICER GEFTER:** Is there any objection to the admission of Exhibit 50, which is the Staff's Revised Air Quality Testimony submitted on June 15th? And it includes the Conditions of Certification under Air Quality. Any objection?

**MR. THOMPSON:** None from Applicant.

**HEARING OFFICER GEFTER:** Is there any objection from any of the parties who are on the phone, any of the Intervenors, any objection?

Hearing none, --

**MS. STRACHAN:** None from Delta.

**HEARING OFFICER GEFTER:** -- none from Delta. Okay. Exhibit 50 is now received into evidence. Thank you.

(Exhibit 50, Staff's Revised Air Quality Testimony submitted June 15th, received in evidence.)

**MS. ICHIEN:** Thank you. And Mr. Franco is now available for questions.

**HEARING OFFICER GEFTER:** Does the Applicant have any cross-examination of the witness?

**MR. THOMPSON:** None. Except again we would point out our appreciation for Staff's Testimony being filed here on Tuesday, when they received the FDOC on Friday. It was a Herculean effort, and we appreciate it.

**HEARING OFFICER GEFTER:** Thank you.

Does the Committee have any questions?

The witness may be excused.

**THE WITNESS:** Thank you.

**HEARING OFFICER GEFTER:** Thank you.

**MS. ICHIEN:** Thank you.

(Witness excused.)

**HEARING OFFICER GEFTER:** Okay. At this point we have admitted the Final DOC into the record; we have Staff's Final Testimony on air quality and we will be receiving clarifications on the FDOC. That will be Exhibit 51, and we'll admit that into evidence prospectively.

**MS. ICHIEN:** Thank you.

**HEARING OFFICER GEFTER:** Now if we have no more witnesses from any of the parties? Okay. Yes.

**MR. THOMPSON:** I would like to briefly recall Mr. Sam Wehn to answer a question posed by the Committee this morning.

**HEARING OFFICER GEFTER:** Yes.

(Samuel L Wehn, recalled as witness by the Applicant, previously sworn.)

REDIRECT EXAMINATION

Q. (By Mr. Thompson) Mr. Wehn, may I remind you you're still under oath.

This afternoon we were asked a question by -- you were asked a question by the Committee regarding the offsets for this project. Are the offsets that the Applicant has acquired or has under its control, are those identified in the record in this proceeding?

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A. Yes, they are. I believe they're identified as Exhibit 19 and 23. And they contain all of the emission offsets that we have either purchased and have a certificate for or have an option contract on.

**HEARING OFFICER GEFTER:** Thank you.

**MR. THOMPSON:** Thank you very much.

That's all I have.

**HEARING OFFICER GEFTER:** Thank you.

(Witness excused.)

**HEARING OFFICER GEFTER:** Is CURE still on the phone?

**MS. POOLE:** Yes.

**HEARING OFFICER GEFTER:** Oh, good. Do you have any questions regarding air quality before we close the record?

**MS. POOLE:** Not at this time, no.

**HEARING OFFICER GEFTER:** Is the City of Antioch still on the phone?

**MR. HALL:** Yes.

**HEARING OFFICER GEFTER:** Do you have any questions regarding the air quality testimony?

**MR. HALL:** No.

**HEARING OFFICER GEFTER:** CAP-IT, do you have any questions or comments at this point on air quality?

**MS. LAGANA:** Yes, I do.

**HEARING OFFICER GEFTER:** Okay. Please begin.

**MS. LAGANA:** I sent a letter to Roberta Mendonca last night, and I'm not sure if people were able to receive a copy.

**HEARING OFFICER GEFTER:** Okay. We had copies made by the Public Advisor's Office. And this was a memo that you sent; is that correct?

**MS. LAGANA:** Yes.

**HEARING OFFICER GEFTER:** And attached is a letter from the Bay Area Air Quality Management District dated August 4th?

**MS. LAGANA:** Correct.

**HEARING OFFICER GEFTER:** Yes. And, for the record, this is Paulette Lagana speaking, correct?

**MS. LAGANA:** Yes. This is Paulette Lagana from CAP-IT.

**HEARING OFFICER GEFTER:** Thank you.

Yes. Paula, we have your filing.

**MS. LAGANA:** Okay. I will read my letter, and then I will also quote some of the material from the Bay Area Air Quality Management District letter dated August 4th, 1998.

The attached letter from Bay Area Air Quality Management District came to my attention over this past weekend. And it seems to support our request -- meaning CAP-IT's request -- for a new air monitoring station to be established in the Pittsburg/Antioch area to assess the impact of existing emissions as well as emissions from the proposed PDEF facility.

To quote from the Air Quality Management District, they were responding to a request that they received in a July 21st, 1998 letter from the New York Landing Homeowners Association -- I think that was Bill Glynn who had written the original letter -- stating that they were interested in obtaining a monitoring station to assess the impact of particulate matters in the Pittsburg area.

In paragraph 5 of that letter the District states: "The District staff will support the New York Landing Homeowners Association request."

And to go quoting the letter:

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"If the CEC requires ENRON to establish a monitoring station, District staff will assist the CEC in determining an appropriate location, configuration and operating schedule, and conduct annual performance audits."

To get back to my letter, "At the conclusion of the last round of hearings on air quality, CAP-IT went on the record to disagree with the statements by Guido Franco that the existing air monitoring stations at Concord, Pittsburg and Bethel Island give sufficient results," which we stated again at that meeting.

"CAP-IT strongly believes that a more accurate assessment of existing as well as future emissions can be made IF additional monitoring station(s) are established in the Pittsburg/Antioch [area] as opposed to assessing data from an air monitoring station in Concord," which we believe is too far away to give an accurate assessment.

"The [Bay Area Air Quality Management District] supports the addition of a new monitoring station. CAP-IT supports the addition of a new monitoring station." And "The CEC has the opportunity to support the addition of a new monitoring station and the power to require one.

"If the CEC is willing to approve and support the construction of the PDEF and the Delta Energy Center projects for Pittsburg [and] Antioch, then the CEC should be equally willing to approve and support the construction of new air monitoring stations, one for each new power plant. This addition will give more accurate data for assessing the effects of particulate emissions on the health and safety of the communities of Bay Point, Pittsburg and Antioch for now and for its future."

And we "Thank you for your consideration."

**HEARING OFFICER GEFTER:** Okay. Thank you.

Do you have any other comments, Paulette?

**MS. LAGANA:** Do I have any additional comments?

**HEARING OFFICER GEFTER:** Yes. I have a question for you. I think the theme all along throughout your entire participation in this case has been to request an additional air monitor in the City of Pittsburgh. And I'm wondering, in all of the statements you have made and all of the things you have sent us, I haven't seen any specific scientific support for adding a monitor to the City of Pittsburgh, and I would like to hear from you as to your reason for requesting this monitor.

**MS. LAGANA:** Well, in the testimony that I've heard throughout the hearings, a 1.5 radius of emissions has been talked about as well as -- given the height of the stakes that will be resulting at the PDEF, I think the radius is given as far away as a five-mile radius in terms of emissions that would affect the area.

It does not -- there are no monitoring stations to capture either the 1.5 or the five-mile radius of emissions that have been -- those stats have been given throughout the hearings.

And that's my concern -- or the concern of CAP-IT is that we want to be able to get results from the monitoring stations that can give us a more accurate picture. We don't believe the stations that are there, the Pittsburgh station and the Bethel Island station, have given a sufficient range of results, that we feel would be more accurate if another -- unless the new monitoring station is added.

That has been our contention. Because we felt that as we look at Pittsburgh and Antioch, and you can't talk about Pittsburgh only, because the Antioch border is so close to where both of these facilities are about to be constructed, that there are so many people in that area. And there are -- that's not the stats that we feel would give us the proper assessment.

I think the figures that are being used, because they're coming from Concord, as well as Bethel Island -- I think the Bethel Island -- when I was listening to Guido Franco at the last hearing, he's talking about how the three areas, the Concord, Pittsburgh and Bethel



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Island area, gave a better frame because Bethel Island is a little farther away and, of course, Pittsburg is right here. But I think that that third station shouldn't be in Concord. It should be in Antioch, in that five-mile radius, because those three statistical results that you would get from those three stations, I think, would give us a better result.

And, no, I'm not a scientist, obviously. But I think you don't need to be a scientist to realize, if you can read that the radius is either 1.5 miles or five miles as a radius, that there should be monitoring stations to be able to capture that in a closer distance than maybe Bethel Island would be able to give us.

**HEARING OFFICER GEFTER:** Thank you.

**MS. LAGANA:** Thank you.

**HEARING OFFICER GEFTER:** Thanks very much.

Does Delta Energy have any questions or comments at this point about air quality?

**MS. STRACHAN:** No, we don't.

**HEARING OFFICER GEFTER:** At this point then we're going to close testimony on air quality, but we do have a member of the public, Mr. MacDonald, who is here who wants to address the Committee.

And we would like you to come forward, please, and perhaps sit by the phone so the people on the phone can hear you also. Thank you.

**MR. MacDONALD:** Thank you for this opportunity to speak to the Commission. I'm representing myself. I'm a resident of Pittsburg. I am a member of the --

**COMMISSIONER MOORE:** You're going to have to speak up a little bit or they won't be able to hear you.

**MR. MacDONALD:** Okay. My name is Jim MacDonald. I'm representing myself. I'm a resident of Pittsburg, California. I am a member of the school board. I am a trustee, but I am not representing the school board as such, although I can testify to a letter

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that was sent to the Committee -- or that it was actually from the superintendent on behalf of the school board.

I would like to offer some highlights of a letter that I have sent to the Environmental Protection Agency considering environmental justice issues in Pittsburg. I also included information outlining the history of citizens' environmental concerns and the lack of soliciting community input by the City of Pittsburg.

I'm not going to read every single letter in here, but included in this document is a letter, January 10th, 1999 to CEC from Jim MacDonald outlining inconsistencies in CEC Staff Docket 98-AFC-1.

There's a second letter, May 25th, 1999, Pittsburg Unified School District to CEC outlining errors in CEC Staff reports on impacts to the Pittsburg Unified School District.

Number 3, I am including a letter, May 24th, 1999, Pittsburg Unified School District to CAP-IT outlining the negative effects of unplanned growth on the Pittsburg Unified School District.

Letter number 4, May 1999, read as public comments to the CEC hearing outlining health concerns of minorities and the city's own hypocrisy. That's the City of Pittsburg's own hypocrisy.

Letter number 5, news clippings, actually in the spring 1999 outlining Pittsburg's economic growth due to the Enron Project.

Number 6, commonly received letters from downtown Pittsburg residents from the Dow Chemical company. That's basically a letter from the BAAQMD telling us that basically Dow Chemical is a "hotspot" and that we have the right to know about environmental problems in our community. Most residents who moved to Pittsburg did not receive this information until after they bought their home, which I have some concerns about.

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7, letter July 1998 to CEC regarding concerns of New York Landing Homeowners Association.

Letter June 8th, 1998 to Pittsburg City's Council regarding concerns of New York Landing Homeowners Association.

Again a letter May 8th, 1998 to the City of Pittsburg from Communities for a Better Environment regarding concerns on CEQA regulations and failure to inform the community of ENRON DEIR study.

10, "News clipping, August (sic) 1998 regarding neighborhood concerns on ENRON."

11, Letter August 20th, 1997, residents concerned about air pollution problems in Pittsburg downtown and city's failure to conform to intent of General Plan.

Letter 12, August 4th, 1997, Bay harbor Park Homeowner's Association to City of Pittsburg stating concerns about environmental problems in the downtown.

Letter April 13th, 1995, Homeowners of the Village at New York Landing to Pittsburg City Council regarding concerns over city's lack of buffer zones between industrial and residential areas in the downtown.

Letter 14, October 12th, 1994, City of Pittsburg to Deborah Cummings acknowledging receipt of letter outlining air pollution in the downtown.

15, newspaper clipping 1994, "Chlorine tanker... derail[ment]" near Pittsburg residents. And we have a tremendous amount of toxic materials in railcars that are stored in and around the 1.5 area. Any one of these cars could obliterate neighborhoods, half of these neighborhoods.

Letter 16, "Excerpt[s] from the Pittsburg DEIR dated June 8th, 1998 (sic) outlining the region's frequent inversions and entrapment of pollutants at ground level."

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Letter 17, "Excerpt[s] from Pittsburg General Plan Section 8.3, Air Quality Guideline (sic) Polic[y] A" states "Maintain good air quality in Pittsburg" as one of the -- one of the things that the city plan- -- the city ought to do.

Now I know that the Commission has received this letter, but I would like to read it to the public.

"The California Energy Commission Staff... acknowledges that the CEC must comply with the Environmental Justice Act if minority or low income populations are identified. If such groups are identified, CEC states that 'Energy Commission staff will work with the community using non-traditional data gathering techniques, including outreach to community-based organizations to identify distinct minority and/or low-income populations living within the PDEF area.' To the best of my knowledge, community concerns on this issue have been ignored. EPA is the agency involved in Environmental Justice... [complaints]. EPA guidelines clearly state that... [the] agency must contact all regulatory and government agencies... [to] determining Environmental Justice issues. The CEC staff, Enron and the City of Pittsburg have apparently not complied with EPA regulations. CEC staff chose a 1.5-mile perimeter around the site to determine the presence of minority and low-income residents. Why was 1.5 mile decided upon rather than some other distance? As far as I can tell the EPA does not designate a required distance to use for this determination of Environmental Justice issues. Was this distance selected to deliberately reduce the low income and minority population findings? If PUSD (Pittsburg Unified School District) had been identified as a minority stakeholder in the Environmental Justice provisions, the EPA could have provided" -- and this is from the EPA regs -- "'direct and substantial assistance.'"

In fact, the EPA is saying from my regulations I can see that they will apply direct and substantial assistance to any minority group that is designated in an environmental

impact. The fact that they have -- that these groups were not identified, I believe has denied them their right to due process. And I also believe it's a Civil Rights matter.

"Within the designed 1.5 mile area, there are neighborhoods that are almost exclusively black and/or Hispanic, and of low-income. These neighborhoods are already negatively affected by localized air and noise pollution problems not picked up by monitoring. The CEC staff report suggests that air pollution data from Concord and Bethel Island, both of which are miles away from Pittsburg, is acceptable. The report has rejected the argument... of local neighborhoods and environmental groups, that [the] existing air pollution in the downtown be considered. Why does the 1.5-mile radius not apply to this data?"

And this is something I have a great concern about. If you're going to use the 1.5-mile radius as -- as a designation of the area to be studied as far as minority groups, then it should be the area of study for air pollution. And there are ways of dealing with this.

And this is only, this is only, again, justice.

"An alternative method [of] checking air pollution could [have been]... Computer modeling of... [all] existing industries and" air pollution sources, which are known to affect the downtown.

I know I've made many complaints to the Air Quality District, and they can -- I know other people have. It would be very easy for you to determine which industries negatively affect the downtown, have their emissions modeled and have an accurate determination, or a better determination of the actual air pollution that exists, that affects the minority groups in the downtown of Pittsburg.

Minority groups in Pittsburg do not live in Concord. They do not live in Bethel Island. Okay. It's inconsistent to be saying on the one hand that we are going to check a 1.5-mile radius and then not hold everybody accountable to doing an air pollution study at the 1.5, if we're going to use the five-mile radius, which is indicated.

"Cumulative Impact section of the CEC staff report indicates that the location of the maximum cancer risk is about 5 miles northeast of the project... This is inconsistent with the stipulation of 1.5 miles being the sphere of influence [for]... the project."

So basically what I'm saying, if you're going -- if we're going to use five miles -- if five miles is the actual sphere of influence, then I would believe that we should use the community's minority make-up as the guidelines as to determining whether or not there are, in fact, minority groups.

The Chamber of Commerce statistics for the City of Pittsburgh, and I have not verified this, I only got this over the telephone: Asian population, 13.9; African American, 18.1; Hispanic 29.6; Caucasian 37.7; and others .7. So obviously the community of Pittsburgh is a minority community and is rightly entitled to an Environmental Justice study.

"I disagree with the contention that posting flyers on the door of the [Pittsburgh Unified School District] is adequate notification. Did officials post flyers on the doors of all government agencies and then just wait in their offices for... response? The School Board is a duly elected governing body of the Pittsburgh Unified School district and as such represents the parents of the community. By not properly including the [Pittsburgh Unified School District] in its fact-finding and investigations, the parents have been denied the right to due process."

And, again, this seems to be a Civil Rights violation.

"It is my understanding that the City of Pittsburgh" -- and the reason I have included this in this letter is because I know you would probably believe that the City of Pittsburgh is working in the best interests of minority groups, and Pittsburgh -- it is my belief that they are not and I have -- and that they are not following the wishes of the community in Pittsburgh. So I have included information in here that I think substantiates my view on this.

"It is my understanding that the City of Pittsburgh got a ruling from the State Board of Equalization that cuts the school district out of any allocations" that might have come from the Enron project. And, again, we were not notified.

The "CEC staff report does not indicate the high levels of background asbestos of the Pittsburgh downtown environment." I don't know if this information was brought to you. I would think that the City of Pittsburgh would have brought this information to you, that in fact there was a study done by the PG&E power plant. They blew out a boiler. They spewed asbestos over a part of the downtown. The neighbors, the residents were upset about it. And PG&E basically came back and said, 'Well, wait a minute. Your background levels are so high our blasting of asbestos in your downtown really didn't make any difference.' That was basically their contention.

"CEC staff report does not indicate the long history of citizen['s] concerns over environmental and pollution problems in the downtown area of Pittsburgh. Nor does the report indicate that the PG&E plant is in the process of being sold and the" -- I don't know if it's the EIR or DEIR for the change of ownership suggests that the operation will double its output and it will not be required to upgrade any existing emissions. So we're looking at an old plant that's going to double its current -- could double its emissions. And I don't see this being taken into account.

There's also newspaper articles showing that this plant has regularly put soot all over the downtown. In fact, I think for some -- for some of the boatowners, PG&E actually has a program of cleaning their boats for them, or at least they have in the past. Now this program, the new owners, are not liable -- you know, are not obligated to continue this program. In fact, the new owners are not obligated to continue any environmental clean-up programs that PG&E may have already be doing.

This "report... does not take into account ground level diesel... emissions due to... heavy truck and rail traffic throughout the downtown. The Bay Area Air Quality Management District has classified diesel engine exhaust emissions as a 'toxic air pollutant'. These negative effects have not been delineated as part of the Cumulative Impact."

And my concern about diesel emissions is, frankly, their plans for bypass roads are going to concentrate truck traffic right next to a planned playground area for children which will be directly downwind about 85 percent of the time. And it's going to concentrate air pollution problems, diesel emissions in the central, central district.

They claim that there is no other bypass route. In fact, there is another bypass route. It was -- when the Air Le Qued (phonetic) project was in front of the City of Pittsburg, community members had had problems, but actually one of the local businesses wouldn't allow Air Le Qued to pass through their property with their trucks, so they came up -- they had to come up with another route through the Steel Mills' property. So there is another route which is more environmentally sound than the one that's currently being proposed. It's going to cost them more money, but it is more environmentally sound than the one that's currently being proposed.

"The City of Pittsburg claims to be acting in the best interests of minority groups in Pittsburg, but Jeff Kolin ([the] City Manager) is the Executive Director of a private... 'Not a public utility'" -- and I don't understand how this works -- "electric company that the City of Pittsburg owns which is in partnership with Enron on this project. This clearly seems to be a conflict of interest."

I don't know personally how Mr. Kolin is being financed or being compensated for his duties as Executive Director. I do know that in the City of Pittsburg many of the different divisions are set a quota, an expenditure. If they are below that quota they get a



bonus. So I really have a problem with the City saying they are absolutely representing the minorities' best interests.

The next letter here is the letter from --

**COMMISSIONER MOORE:** Mr. Chairman, I'm going to ask if this witness -  
- rather than go through that, because we don't have the time for that, if he can submit --

**MR. MacDONALD:** You don't -- citizens --

**COMMISSIONER MOORE:** -- if we can submit that for the record and --

**MR. MacDONALD:** I think the public has a right to know.

**COMMISSIONER MOORE:** I think that submitting that so that we can read those is proper and effective. You've read one letter. I don't propose that we really have the time to go through 15 letters on topics that were publicly noticed, where I don't believe I saw you on any of the topics that you're talking about.

And we will read them if you submit them. It seems to me that that's proper.

And I would ask the Chairman to --

**PRESIDING MEMBER ROHY:** I concur with that.

**COMMISSIONER MOORE:** -- concur with that.

If you would submit that for the Docket the way all of our other witnesses do, we would be pleased to read it and take it into account.

**MR. MacDONALD:** Is that the wishes of the board?

**HEARING OFFICER GEFTER:** Yes.

**MR. MacDONALD:** Okay. I will submit this. Unfortunately, I will make exception. I do believe you are denying the citizens of Pittsburg their due constitutional right to freedom of speech and to be heard. I want that noted for the record, that you are denying -  
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**COMMISSIONER MOORE:** Well, I hope noting for the record as well that the other citizens of Pittsburg take advantage of the time when these things are publicly

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noticed, when we have meetings in Pittsburg, and on the topics to come and address us when it makes the most impact, not at the end of the process. I doubt that you're serving your constituency very well by conducting yourself in this manner, as well.

**MR. MacDONALD:** Well, I do believe that the citizens of Pittsburg are, most, the majority of them, hoped that the Council would have worked in their best interest. The Council did say that they would support the School District. It is clearly documented that the City wants Environmental Justice issues taken into account that they want clean air, that they want buffer zones. It's clearly stated in the General Plan.

The elected officials, in my opinion, are not acting in the best interests of the citizens of Pittsburg. And unless the people of Pittsburg publicly hear these things, they simply do not know that this is going on.

But I will submit this to the...

**COMMISSIONER MOORE:** The Docket.

**MR. MacDONALD:** ...to the Docket.

**COMMISSIONER MOORE:** Thank you.

**MR. MacDONALD:** And I would thank you for your time.

**HEARING OFFICER GEFTER:** Thank you very much.

If there are no other comments from the Intervenors, or from the parties, or from any other members of the public we are going to close the record on this case.

The Presiding Member's Proposed Decision should be issued by the end of June, we hope. And if a Revised PMPD is necessary at the end of the 30-day comment period on the PMPD, then there is a regulatory 15-day review period from the release date of the PMPD until we get to the Commission hearing.

At this point if there are no other comments we are going to adjourn the Hearing and close the record.

**MR. THOMPSON:** Thank you.

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Prior to the close of the record I have two things.

Number one, we believe that we have settled all, I believe, the issues in front of the Committee. And because of the extensive public involvement in the City of Pittsburgh, your holding hearings in Pittsburgh, all of them down there, I am pretty confident that we have aired the issues and aired them well. And I would hope that we could not see issues of sufficient import to require a revised PMPD, but maybe go directly to the Final Decision.

Lastly, and I think Mr. Wehn would like to say something as well, I want to give my appreciation for both Staff and the Committee in this matter. These are difficult proceedings. The issues are complex and numerous and the interests are varied. And we appreciate your attention, your work and your willingness to accommodate us when we've asked, as far as things like schedule.

And I think that we have all collectively shown that power plants get better through this process, and we believe that this is going to be a terrific power plant. And I personally want to thank you all very much.

**MR. WEHN:** I, too, would like to thank you for your efforts. We do sincerely as an Applicant appreciate the work that you have put in to keep us on schedule, to work to resolve these issues.

The Staff, my hat's off to you. I appreciate the work that you have done. It has been trying at times, on particularly on the air quality side, but I think that we managed to get through many of these tough subjects.

I hope that we have satisfied the Intervenors, as they have asked questions. I hope we have satisfied the residents of the City of Pittsburgh. And it has been our intent to work with the City of Pittsburgh residents. And we will continue to do that throughout this process, because I don't feel that it ends here. It just begins.

Thank you very much.

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**HEARING OFFICER GEFTER:** Thank you. The record is now closed and this Hearing is adjourned.

(The Evidentiary Hearing adjourned for the day at 3:34 o'clock p.m.)

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**CERTIFICATE OF REPORTER**

I, **SUSAN M. PALMER**, a Notary Public for the State of California, Commission Number 1193659, duly authorized to administer oaths pursuant to Section 8211 of the California Code of Civil Procedure, and a duly-commissioned Electronic Reporter of **Palmer Reporting Services**, do hereby declare and certify under penalty of perjury I have recorded the foregoing **EVIDENTIARY HEARING in the matter of the Application for Certification for the Pittsburg District Energy Facility**, held in Sacramento, California at the California Energy Commission, on the **15th day of June 1999**.

I also certify the aforementioned transcript was transcribed under my direction, a Certified Reporter and Transcriber by the American Association of Electronic Reporters and Transcribers, No. 00124, and that the foregoing pages constitute a true and accurate transcription of the Evidentiary Hearing.

I further certify I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said Evidentiary Hearing.

Dated this **17th day of June 1999** at Manteca, California.

**SUSAN M. PALMER**  
**CERTIFIED ELECTRONIC REPORTER**  
**NOTARY PUBLIC, COMM. No. 1193659**